

# **DRAFT**

## **MINUTES of the Third Meeting of the Surgical Technologists' Technical Review Committee**

**January 5, 2016  
9:00 a.m. to 3:00 p.m.  
Lower Level Conference Room "D"  
The Nebraska State Office Building, Lincoln, NE**

### **Members Present**

Douglas Vander Broek, DC (Chairperson)  
Christine Chasek, LIMHP, LADC  
Greg G. Gaden, EdD  
Jeffrey L. Howorth  
Jane Lott, RDH, BS  
Robert Sandstrom, PhD, PT  
John Tennity, DPM

### **Members Absent**

### **Staff Present**

Matt Gelvin  
Ron Briel  
Marla Scheer

### **I. Call to Order, Roll Call, Approval of the Agenda**

Dr. Vander Broek called the meeting to order at 9:00 a.m. The roll was called; a quorum was present. The agenda and Open Meetings Law were posted and the meeting was advertised online at [http://dhhs.ne.gov/Pages/reg\\_admcr.aspx](http://dhhs.ne.gov/Pages/reg_admcr.aspx). The committee members unanimously approved the agenda for the third meeting.

Then committee members unanimously approved the minutes of the second meeting after making two corrections.

### **II. Public Hearing Testimony on the Proposal**

During the morning session the committee members received testimony from the applicant group, opponent groups, and neutral testifiers. Proponent groups and opponent groups were each given sixty minutes to present their testimony.

### **III. Formulation of Committee Recommendations**

During the afternoon session the committee members discussed information pertinent to each of the four criteria and then took action on them as part of the process of formulating recommendations.

## **Committee Actions Taken on the Four Statutory Criteria:**

**Criterion one:** Unregulated practice can clearly harm or danger the health, safety, or welfare of the public.

**Action taken:** A 'yes' vote is a vote in favor of approval of the proposal. A 'no' vote is a vote against approval of the proposal.

Voting yes on this criterion were Chasek, Gaden, Lott, Sandstrom, and Tennity. Voting no was Howorth. Vander Broek abstained from voting.

### **Comments from committee members:**

- Dr. Tennity commented that new technology available in the surgical suite has created a need for competency assurance of surgical technologists.
- Dr. Gaden commented that the technical complexity of the functions of surgical technologists has made it necessary to create a more consistent education and training standard for surgical technologists.
- Ms. Lott commented that education has become a vital concern in the provision of surgical technology services.
- Dr. Vander Broek commented providing a consistent education and training background by those who provide surgical technology services is important.
- Dr. Sandstrom commented that there is potential for harm to the public inherent in the current situation of surgical technology services, and that there is a need to create consistent education and training standards for those who provide these services. He added that there is a need for some kind of disciplinary process under a regulatory board. He also stated that the Howard Paul case does raise concerns regarding delegation of duties to surgical technologists in the surgical suite.
- Ms. Chasek commented that most testifiers have indicated that something needs to be done to create assurance of competency in this field, and that currently there is no disciplinary process, no tracking of providers, and no base line definition as to what surgical technologists do or how they are to be trained.
- Mr. Howorth commented that the applicant group presented no evidence that the public has suffered any harm from the provision of surgical technology services. He went on to state that health facilities are highly regulated by both state and federal governmental laws and institutions, and that because of this there is no need for the state to credential those who provide these services.

**Criterion two:** Regulation of the profession does not impose significant new economic hardship, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.

**Action taken:** A 'yes' vote is a vote in favor of approval of the proposal. A 'no' vote is a vote against approval of the proposal.

Voting yes on this criterion was Gaden. Voting no were Lott, Sandstrom, Chasek, Tennity, and Howorth. Vander Broek abstained from voting.

**Comments from committee members:**

- Mr. Howorth commented that passing this proposal would create real hardships for those facilities that provide surgical services, and that wages would increase as a result of passing this proposal.
- Ms. Chasek commented that the proposal would likely create some hardships for health care facilities that provide surgical services. However, there is a need to create basic education and training requirements for surgical technologists in order to protect the public.
- Dr. Sandstrom stated that the proposal would create real shortages in services if it were to pass because the colleges would not be able to turn out graduates fast enough to keep up with demand. He went on to state that some persons interested in doing this work might move to neighboring states that do not license surgical technologists in order to avoid the additional costs of becoming licensed. He also expressed concern about the proposed grandfather clause that would allow all current providers to become licensed without having to satisfy the training requirements of the proposed license.
- Ms. Lott commented that there would likely be some hardship for health care facilities but not for the general public.
- Dr. Gaden expressed agreement with Ms. Lott.
- Dr. Tennity stated that wages and costs for health care facilities would likely increase but that the public would not be adversely impacted by the proposal.

**Criterion three:** The public needs assurance from the state of initial and continuing professional ability

**Action taken:** A 'yes' vote is a vote in favor of approval of the proposal. A 'no' vote is a vote against approval of the proposal.

Voting yes on this criterion were Chasek, Gaden, Lott, Sandstrom, Howorth, and Tennity. Vander Broek abstained from voting.

### **Comments from committee members:**

- Dr. Tennity commented that it is the responsibility of the State to provide assurance that the services in question are safe. The services in question have become too complex for the State to leave this responsibility to health care facilities.
- Dr. Gaden expressed agreement with Dr. Tennity, adding that licensure would address the concerns that have been raised about the potential impact of the Howard Paul on surgical technology services. Dr. Gaden went on to state that there might be merit in the idea of a registry, but that this idea needs to be fleshed out in such a way as to address education and training concerns for surgical technologists, and this, as yet, has not been done.
- Ms. Lott stated that the public does need assurance that surgical technologists receive standardized education and training that enables them to provide safe and effective services.
- Dr. Vander Broek commented that there is a need for such assurance but expressed concern about how this could be done without limiting the pool of persons available to provide the services in question.
- Dr. Sandstrom commented that there is a need to create a standardized education and training regimen for surgical technologists.
- Ms. Chasek commented that the public expects that all persons who provide surgically related services possess education and training to perform their functions safely and effectively.
- Mr. Howorth commented that the public has the right to expect that the State will police health care facilities so as to ensure that they carry out their responsibility of protecting the public vis-à-vis the services of surgical technologists.

### **Criterion four: The public cannot be protected by a more effective alternative.**

**Action taken: A 'yes' vote is a vote in favor of approval of the proposal. A 'no' vote is a vote against approval of the proposal.**

Voting yes on this criterion were Chasek, Gaden, Lott, and Tennity. Voting no were Howorth and Sandstrom. Vander Broek abstained from voting.

### **Comments from committee members:**

- Ms. Chasek commented that registration does offer the possibility of a viable option to the current proposal, but that more information is needed as to how this option would address all concerns raised about the current practice situation.
- Dr. Gaden commented that concerns raised about the potential implications of the Howard Paul case for surgical technology services were vital concerns for him, and were decisive in his support for licensure for this profession.
- Dr. Tennity stated that the idea of registration for this profession has some potential but that there are so many versions of registration that it's hard to know which version would be best for this particular profession. He went on to state that

licensure would address all concerns raised about education and training as well as concerns raised about Howard Paul, for example, whereas it is not clear whether or not registration would be able to address all of these concerns.

- Dr. Sandstrom stated that there is a better way to address the issues under review than licensing this profession. He went on to state that title protection is what is needed to address these issues, not licensure. This could take the form of registration or certification, for example. He went on to state that the current situation would be preferable to creating a complex and costly licensing process that has the potential to restrict access to services.
- Mr. Howorth commented that the current situation is his preference, but that if creating personnel standards becomes the policy direction of choice he would prefer an option other than licensure because the latter would be too costly and would restrict access to services.

### **Action taken on the entire proposal was as follows:**

**Action taken: A ‘yes’ vote is a vote in favor of approval of the proposal. A ‘no’ vote is a vote against approval of the proposal.**

Voting yes were Chasek, Gaden, Lott, and Tennity. Voting no were Howorth and Sandstrom. Vander Broek abstained from voting.

### **Comments from committee members:**

- Dr. Tennity commented that action of some kind is needed to address competency issues. The need for more knowledge and technical know-how in surgical technology makes it necessary to create a licensing process for this profession.
- Dr. Gaden commented that there is a need to do something to address concerns raised about the current situation and that, right now, licensure seems to hold promise of being the most likely way of addressing all of these concerns. He went on to state that he does have concerns about the potential for significant increases in the cost of services if licensure passes, but concluded his remarks by stating that, right now, he sees no other way than licensure for addressing concerns raised by the Howard Paul case, for example.
- Ms. Lott commented that in today’s health care world it’s essential that there be assurances that each professional possess the education and training necessary to do their work safely and effectively. She stated that this is why she supports licensure for this currently unregulated profession.
- Dr. Sandstrom stated that he respects surgical technologists and recognizes that there is a need to do something to address outstanding concerns about the current situation, but added that licensing this profession is not the best solution. There are better ideas including registration or certification, for example. He went on to state that if the licensure proposal passes access to services will decline significantly. He added that licensure is not appropriate for this group because they do not have direct contact with the public. One does not pick their own

surgical technologist. Some form of title protection would be the best way to address the concerns raised.

- Ms. Chasek stated that there is a need for assurance of competent practice in this area of health care. Surgical patients are very vulnerable and have no say regarding which surgical technologist is working when their surgery is being conducted.
- Mr. Howarth expressed agreement with Dr. Sandstrom that the current licensing proposal would be too costly and would limit access to services. Regarding concerns about the Howard Paul case he stated that the more recent 1998 'Captain-of-the-Ship' ruling by the Nebraska Supreme Court should be regarded as having super-ceded the Howard Paul decision of 1898, and that consequently the delegation concerns of the applicant group are very much overstated.

#### **IV. Future Meeting Dates**

The following meeting dates and times were selected by the committee members:

- January 14<sup>th</sup>, 2016: 10:00 a.m. to 11: 00 p.m.

#### **V. Next Steps**

The next step in the review process on this proposal is the review of the Credentialing Review Committee of the Nebraska State Board of Health to be held on January 14, 2016 at 10:00 a.m.

#### **VI. Other Business and Adjournment**

There being no further business, the committee members unanimously agreed to adjourn the meeting at 2:00 p.m.